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No. 85-2093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE REVEREND JAMES O. MOTE, *et al.*,
Petitioners,

v.

THE BISHOP AND DIOCESE OF COLORADO, *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF

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Respondents would have the Court believe that state court decisions since *Jones v. Wolf,* 443 U.S. 595 (1979), reflect no conflict or confusion over the neutral principles doctrine, that Petitioners' interpretation of neutral principles is inflexible and would narrow or redefine the doctrine, and that the Colorado Supreme Court properly applied the neutral principles doctrine in deciding the case below. Respondents overstate their position and, in doing so, serve to highlight the discord among state courts over the meaning and proper application of the neutral principles analysis in church property cases, and the need for further guidance from this Court.

1. In the years since *Jones v. Wolf,* commentators have chronicled the difficulties that state courts have

experienced in applying the neutral principles analysis, the conflicting opinions in church property cases that *Jones* has left in its wake, and the ill effects of such decisional discord. *See* Pet. at 21-22, 27 and accompanying notes. Even the lower courts themselves, including the court below (*see* Pet. App. 81a-83a), have observed the widespread conflict among opinions that have been issued under the neutral principles analysis since *Jones;*[1] these conflicts are reflected both by the contrary results reached in church property disputes arising within the same denominations in similar factual contexts (*see* Pet. at 22-23), and by the differing evidentiary treatment that courts have given to supposed indicators of an intent to create a trust (*see* Pet. at 24-26).

Respondents seek to explain these conflicts by attributing them to "differing state law or differing elements in the factual background" of the cases, not to any fundamental conflict in courts' interpretation of neutral principles. Respondents' Brief at 11. That, however, simply is not the case.

While church property cases will always involve some factual differences, and although the property and trust laws to be applied in these cases will naturally vary from state to state, such distinctions do *not* account for the contrary outcomes of the cases discussed by Petitioner at pages 22-23 of the Petition, and do *not* explain the differing significance accorded to the indicators of trust discussed at pages 24-26 of the Petition. Instead, what does account for these

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[1] *See, e.g., Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465, 471-73 (Mo. 1984), *cert. denied,* 105 S.Ct. 2361 (1985).

divergent results and interpretations are the lower courts' conflicting views of what evidence may be considered under the neutral principles analysis of *Jones,* and what inferences may be drawn from such evidence. This is true, for example, in the cases discussed by Respondents at pages 11-13 of their brief and by Petitioners at pages 22-23 of the Petition, where the contrary opinions resulted not from the differing factual elements of the cases but, rather, primarily from the courts' fundamental disagreement over whether, and to what extent, provisions in the Book of Order could be considered and could be deemed to give rise to a trust over local church property, i.e., whether, and to what extent, such evidence was cognizable for purposes of neutral principles analysis.[2]

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[2] *Compare Foss v. Dykstra,* 342 N.W.2d 220, 225 n.7 (S.D. 1983) ("our conclusion that the Book of Order as it existed on November 24, 1980, did not contain provisions creating a trust over local property") *and First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of Am.*, 62 N.Y.2d 110, 464 N.E.2d 454, 476 N.Y.S.2d 86, *cert. denied,* 105 S.Ct. 514 (1984) (Book of Order contains no provisions expressly or impliedly creating trust over local church property in favor of parent church), *with Fonken v. Community Church of Kamrar,* 339 N.W.2d 810, 818 (Iowa 1983) ("When its provisions are construed together, the Book of Order gives UPCUSA exclusive ultimate control of the uses and disposition of local church property.") *and Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore,* 296 Md. 573, 590, 464 A.2d 1008, 1017 (1983), *cert. denied,* 465 U.S. 1027 (1984) ("the local church under United's Book of Order could not sell property without permission [from the denomination]"). *See also, e.g., Presbytery of Elijah Parish Lovejoy v. Jaeggi,* 682 S.W.2d 465, 471-73 (Mo. 1984), *cert. denied,* 105 S.Ct. 2361 (1985), where the Supreme Court of Missouri, sitting *en banc,* analyzed a num-

2. Respondents' failure to perceive the real cause for conflict among these cases results from their refusal to accept the neutral principles analysis for what it is and what it was intended by this Court to be—a restrictive rule of evidence that establishes limits on what a court may consider in determining the existence of a trust over local church property in favor of a denomination. Thus, while we concur with Respondents that a virtue of the neutral principles doctrine is the flexibility that it affords to state courts to adopt any one of various approaches for settling church property disputes, the doctrine imposes immutable limits on the evidence that may be considered under any of the alternative approaches, limits that adhere regardless of differences in the factual context of, or state trust laws applicable to, the particular case. This characteristic was clearly intended by the majority in *Jones,* which stated that a court could adopt any neutral principles method for deciding church property disputes, but only " 'so long as it involves no consideration of doctrinal matters . . .' ", *Jones v. Wolf,* 443 U.S. at 602 (*quoting Maryland and Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 368 (1970)), so long as it "take[s] special care to scrutinize the document[s] in purely secular terms . . .", 443 U.S. at 604, and so long as it "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* at

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ber of conflicting church property opinions arising within the United Presbyterian Church in the United States of America ("UPCUSA"). The court's analysis reflects that the decisive issue in those cases was whether the Book of Order established an implied trust in favor of UPCUSA. As the court observed, courts in Iowa and Maryland held that it did, while courts in New York and South Dakota held that it did not.

603. Although not in agreement, the dissent in *Jones* also recognized this signal feature of neutral principles analysis, referring to it as a "restrictive rule of evidence" (*id.* at 611) that would allow civil courts to consider only evidence that "has been stated, in express relation to church property, in the language of trust and property law" (*id.* at 612)(footnote omitted).

3. Like Respondents, the court below also misperceived the evidentiary limits that the neutral principles analysis imposes. Although the court correctly observed that the neutral principles analysis allows courts to examine not only deeds, statutes, corporate charters and similar instruments but also church constitutions, by-laws and the like, it rejected this Court's instruction that such instruments could be examined only for the purpose of identifying secular provisions that expressly, or by clear implication, inform the court in purely secular terms how the parties intended to dispose of local church property in the event of a dispute. Instead, embracing the rationale of the dissent in *Jones,* it argued at length why, contrary to the majority's edict in *Jones,* it could consider evidence that was not expressed in the traditional forms and language of trust law (*see* Pet. App. 62a-67a), even though such evidence consisted of non-secular matters such as St. Mary's vows of accession to the constitution and canons of PECUSA, its promises of conformity to the doctrine, discipline and worship of the church, and its participation in diocesan affairs.[3]

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[3] Respondents seek to legitimize the Colorado Supreme Court's reliance upon such non-secular facts by stating that such facts were part of the "record established in the trial court, based

In examining and relying upon such evidence, the court below ventured into the interpretation of religious doctrine, practice and polity, matters which this Court said in *Jones* that state courts must not even *consider* as part of a neutral principles analysis. 443 U.S. at 602. In seeking to interpret such ecclesiastic matters in its search for indicators of a trust intent, the court below unwittingly became a vehicle for the enforcement of religious discipline by a denomination upon its seceding members. For, particularly in the

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upon stipulations and undisputed evidence, not challenged by petitioners in the courts below. . . ." Respondents' Brief at 9-10. Respondents are mistaken in two significant respects. First, although the facts found by the trial court were, as we noted at page 2 of the Petition, "based *in part* on a stipulation and were *generally* not in dispute" (emphasis added), some of the most important facts were directly controverted. For example, while the Colorado Supreme Court ultimately found an intent on the part of the local parish to hold property in trust for the denomination, based on the accession clause and on other parts of the supposedly uncontroverted factual record, that ignored the testimony of all but one of the persons who signed the accession clause that, in acceding to the canons and constitution, it was *not* their intent to establish a trust over St. Mary's property in favor of the Diocese. *See* R. (Folio) 1260-62, 1286-87, 1307. Second, and more importantly, Respondents asserted in the trial court that the case should be decided on, *inter alia*, a "polity" theory under *Watson v. Jones*, 80 U.S. (13 Wall) 679 (1871), and the trial court so held. *See* Pet. App. 14a. Consequently, much evidence introduced by Respondents, on which the trial court based a substantial portion of its findings, was germane to a polity inquiry but was uncognizable for purposes of a neutral principles analysis. Thus, while the substance of some of the facts to which Respondents refer was undisputed in the trial court, the relevance of such facts to, and the permissibility of considering those facts as part of, a neutral principles analysis was and is most assuredly contested and is at the heart of this petition for writ of certiorari.

case of a church that is doctrinally hierarchical in polity, such as here, examination of the types of matters on which the court below relied will virtually always yield a conclusion that the parent church has exercised substantial control over the local parish *during its period of affiliation*, even perhaps relating to the use of local church property, even though such activities may reveal nothing about the parties' intentions regarding such property *in the event of a withdrawal of the congregation from the denomination. See* Pet. at 14 n.8, 29 n.29. Because of the importance of a local church's property to its continued identity, unity and viability, the effect of such an interpretation of the neutral principles doctrine would be to make it a badge of perpetual submission that forever binds a congregation to its denomination, no matter how deep and lasting a schism may have become.

4. In *Jones,* the Court observed that problems in application of the neutral principles analysis "should be gradually eliminated as recognition is given to the obligation of 'States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.' [Citations omitted]." 443 U.S. at 604. In the ensuing years since *Jones* was decided, the confusion and resulting decisional discord in application of the neutral principles analysis has not abated, and conflicting opinions continue to be issued.[4] Commentators suggest, moreover, that ab-

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[4] *See, e.g., Mikilak v. Orthodox Church In America,* No. 78 T.D. 1985 (Comm.Ct.Pa., July 29, 1986), where the Commonwealth Court of Pennsylvania reversed the decision of the lower

sent further guidance from the Court, this confusion and conflict is likely to persist. *See* Pet. at 21-22, 27 and accompanying notes. Because church property disputes implicate not merely the property itself but, rather, the exercise of a congregation's religious freedom to associate or disassociate with a denomination free of the coercive effect that forfeiture of its property might impose, Petitioners submit that it is imperative that the Court take this opportunity to clarify the scope of permissible inquiry under the neutral principles doctrine.

For these reasons, and those stated in the Petition, a writ of certiorari should be issued to the court below.

Respectfully submitted,

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court because, contrary to *Jones v. Wolf*, the church documents "evidence[d] only an ambiguous intent to create a trust" and did not contain "the clear unequivocal evidence necessary to support a conclusion that a trust existed." Slip Op. at 10.

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